

AP-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:

Oleg B. Rashkovskiy

Serial No.: 09/690,159

Filed: October 17, 2000

For: Providing Content
Interruptions

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Art Unit: 2623

Examiner: Ngoc K. Vu

Atty Docket: BKA.0005

Mail Stop **Appeal Brief-Patents**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

In response to the new arguments raised by the Examiner under the section Response to Arguments, the following Reply Brief is submitted.

1. The Alternative Argument

In the second paragraph under the response to the argument section, the Examiner suggests that there is an alternative embodiment in which the advertising repository comprises storage for storing digitally encoded programming or an analog version of the programming feed, citing column 15, lines 24-34. As pointed out in the appeal brief, the only reasonable explanation for the relied upon material is that the use of the phrase "programming feed" is to indicate advertising that is video like a programming feed.

This should not be surprising to the Examiner because he points out the duality of content and advertising in the second full paragraph on page 9 of the Answer. In other words, the only reasonable explanation is that the so-called "programming feed" is still advertising. There is no other way to understand Figure 5, which talks about an advertisement repository to store

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Cynthia L. Hayden

advertising and to provide it from above to the video switch 90. That video switch then receives programming delivery from the left side and somehow (not explained in the reference) switches or toggles between the two. If the advertisement repository 86 included both the advertisement and the content, then the system teaches no way to "toggle" between the two, to use the language of the reference.

Thus, if interpreted as the Examiner suggests, the reference does not teach how to toggle between advertisement and content when they both come from the same source to the video switch 90. The Examiner does not feel compelled to supply this missing element. But the Examiner cannot rely on the alleged interpretation of the reference and then leave the Board without any guidance on how that alleged interpretation could be implemented based on anything in the reference. It is respectfully submitted that the reference does not teach how to toggle between content and advertisement if they were both, surprisingly, to feed out from something called an advertisement repository.

2. Multiplexing

In accordance with another embodiment (different from the embodiment shown in Figure 5), there is a suggestion that multiplexing could be used. This, according to the Examiner, is described in column 18. But, clearly, this discussion relates to Figure 7. Note that Figure 7 uses a different ad insertion device 60. (The ad insertion device in Figure 5 was item 80). The only discussion of the ad insertion device 60 can be found in connection with Figure 4. There is no use of an advertisement repository in the embodiment of Figure 4.

Thus, the multiplexing argument is simply a red herring. It relates to an embodiment without caching of the advertisement and, therefore, is irrelevant to the claims.

That is because the claim requires storing the content and the advertisement in a cache. There is no caching in the cited reference and there is no selecting a stored advertisement as claimed. Instead, the information is simply toggled by a video switch between an ad source 62 and the programming source 66, as shown in Figure 4.

3. The Argument that Zigmond is not Limited to Inserting Advertisements

Again, this argument relies on the embodiment of Figure 4, which is never before relied upon in any rejection to date. There was a good reason for this. The reason that Figure 4 was

never relied on before was that Figure 4 is irrelevant because it does not teach an advertising repository or other advertising cache. On appeal, this problem seems to have been overlooked in the Examiner's Answer.

4. Content and Advertisement are Allegedly the Same

The Examiner makes the point that content and advertisement are basically the same kind of data, just being used for different purposes. This is probably the best explanation for why Zigmond suggested something called an "advertisement repository" could hold the "programming feed." Because of the similarity of the data, he has confused the two.

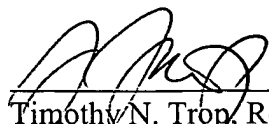
But the point set forth in the claims of the present application is that there must be something called "content" and something called "advertisement." Two different words are used and it would be improper to simply read the words out of the claim. The claim requires different handling of content and advertisement. That claim construction has been respected by the Examiner throughout prosecution up to the time of appeal. The reasonable interpretation of a claim throughout prosecution calls for receiving content and at least two advertisements. Necessarily, the content and the advertisements, which are treated differently, must be distinguished when analyzing the claim.

The attempt to meld the content and advertisement in the Examiner's Answer is plainly improper and does not comport with common understanding of the difference between the two sets of data. This belated position derives from the apparent recognition that the reference to Zigmond simply does not work as set forth in the present claims.

Therefore, the rejection should be reversed.

Respectfully submitted,

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